

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.145 of 2015

IN

Civil Writ Jurisdiction Case No. 10467 of 2013

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Yugal Kishore Ray Son of Late Jiwash Ray resident of village- Laheriaganj, Madhubani, Ward No. 3, near J.N. College, Gola , PO and P.S- Madhubani, District- Madhubani.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The Director, Secondary Education, Human Resources Development Department
3. The District Education Officer, Madhubani.
4. The Headmaster Laxmi Narayan Gupta Ramshakhi Balika Uchha Vidyalaya, Rajnagar, Madhubani.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Tej Bahadur Singh, Sr. Adv
Mr. Pankaj Kumar Sinha, Adv

For the Respondent/s : Mr. Indeshwari Pandey, AC to GA 3

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 19-07-2017

On 04.07.2017, we passed the following orders:-

“From the materials that have come on record and after considering the submissions that were made before us, we find that the learned Writ Court has refused to grant benefit to the appellant solely on the ground that the appellant’s case was considered at the relevant time by the appropriate Committee but as he did not fall within the zone of consideration on account of the post of Commerce Teacher not available in the Institute in question, relief was denied to the appellant.

However, while doing so the learned Writ Court lost sight of the material facts that even though at the relevant time, when the matter was considered by the appropriate Committee, the post in question of



Commerce Teacher was not available, but the State Government retrospectively created the post with effect from 4.2.1989 by passing a resolution on 8.8.2012, vide Annexure-4A granting benefit to all such employees, who were working on the date, when Annexure-4A was issued, however the same has not been given to the appellant only because on the date the decision was taken i.e., 8.8.2012 the petitioner had retired.

However, as the fact remains that on 8.8.2012 the post was created retrospectively w.e.f. 4.2.1989 when the appellant was in service and if that be so, till the date he attained the age of superannuation, the benefit of the aforesaid resolution should be granted to the appellant and that is the prima facie view of this Court and in denying the benefit of promotion only on account of the fact that the appellant has retired, an error has been committed both by the Writ Court and the Department. When the post was created on 4.2.1989, for benefit to the employee who were in service on 4.2.1989, the same should be granted to the appellant also and his subsequent retirement in the year 2010 should not be an impediment for grant of benefit to the appellant. The decision of the State Government in implementing the resolution dated 8.8.2012 only to such persons who were in service as on 8.8.2012 seems to be an arbitrary decision, in fact, the reasonable approach would have been that the decision was made applicable to all such persons, who were working on the post, when the posts were created i.e. 4.2.1989.

When this observation was made by the Court, learned counsel for the State prays for two weeks time to seek instructions.

He may do so.

List after two weeks.”

In pursuance to the same action, a supplementary counter affidavit has been filed, wherein issue raised by the State Government is only to the effect that the three members Committee has already examined the matter and as the teacher in the subject of



Commerce was not available, no relief can be granted to the appellant. However, as already detailed hereinabove, we find that the State Government retrospectively created the post on 04.02.1989, vide resolution dated 08.08.2012, Annexure-4A and on 08.08.2012, when the post was created w.e.f 04.02.1989, the appellant was already in service. The post being created w.e.f. 04.02.1989, the appellant is entitled to the benefits.

The learned Writ Court having not taken note of this view, we allow this appeal, direct absorption of the appellant on the subject of Commerce which was created w.e.f. 04.02.1989 and grant him all consequential benefits till his date of retirement. The action be taken for conferring the benefits within a period of three months from the date of receipt of a copy of the order.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

